

Department of Taxation

Regulation Title: LEASES OR RENTALS
VAC Number: 23 VAC 10-210-840

- 1. Statement identifying and describing the source of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;**

Section 58.1-203 of the Code of Virginia authorizes the Commissioner of the Department of Taxation to promulgate regulations related to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the department.

- 2. Statement delineating the potential issues to be addressed in the proposed regulation;**

The purpose of the regulation is to explain and clarify the application of the sales and use tax to leases or rentals of tangible personal property. The regulation defines the term AGross proceeds≅ which is the basis for the computation of the tax. Section 58.1 -602 of the Code of Virginia includes gross proceeds as an item subject to retail sales and use tax. The regulation interprets this Code provision as it pertains to many retail and automobile businesses engaged in renting to own, or leasing tangible personal property.

- 3. Statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizen or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve;**

The regulation is essential to clarify the application of the tax to leases or rental agreements, what fees or charges are included in the definition of gross proceeds, and to provide guidance regarding the application of the tax to service charges and other miscellaneous charges.

- 4. Statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered, and the reasoning by which the agency has rejected any of the alternatives considered.**

Alternatives which might achieve the essential purpose for which this regulatory action has been initiated were considered but rejected. In light of the continuing debate over the

A conditional sale is versus lease or rental issue and confusion generally in the lease/rental industry over what service charges are included in the gross proceeds of the lease, this regulation is essential to clarify the proper application of the tax to ensure compliance with the law. In addition, the regulation is essential to uphold the department's policy in the event of litigation.